

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.18e Application for entry of order setting aside adjudication; filing; contents; submitting copy of application and fingerprints; comparing fingerprints; report; fee; serving copy of application on attorney general and prosecuting attorney; contesting application; notice to victim; definitions; hearing; affidavits; proofs; entry of order; setting aside adjudication as privilege and conditional; violation of § 750.413; effect of entering order; sending copy of order to arresting agency and department of state police; nonpublic record of order and record; availability of nonpublic record; fee; exemption from disclosure; divulging, using, or publishing information as misdemeanor.

Sec. 18e. (1) Except as provided in subsection (2), a person who has been adjudicated of not more than 1 juvenile offense and who has no felony convictions may file an application with the adjudicating court for the entry of an order setting aside the adjudication. A person may have only 1 adjudication set aside under this section.

(2) A person shall not apply under this section to have set aside, and a judge shall not under this section set aside, any of the following:

(a) An adjudication for an offense that if committed by an adult would be a felony for which the maximum punishment is life imprisonment.

(b) An adjudication for a traffic offense under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or a local ordinance substantially corresponding to that act, that involves the operation of a vehicle and at the time of the violation is a felony or misdemeanor.

(c) A conviction under section 2d of this chapter. This subdivision does not prevent a person convicted under section 2d of this chapter from having that conviction set aside as otherwise provided by law.

(3) An application under this section shall not be filed until the expiration of 5 years following imposition of the disposition for the adjudication that the applicant seeks to set aside, or 5 years following completion of any term of detention for that adjudication, or when the person becomes 24 years of age, whichever occurs later.

(4) An application under this section is invalid unless it contains the following information and is signed under oath by the person whose adjudication is to be set aside:

(a) The full name and current address of the applicant.

(b) A certified record of the adjudication that is to be set aside.

(c) A statement that the applicant has not been adjudicated of a juvenile offense other than the one that is sought to be set aside as a result of this application.

(d) A statement that the applicant has not been convicted of any felony offense.

(e) A statement as to whether the applicant has previously filed an application to set aside this or any other adjudication and, if so, the disposition of the application.

(f) A statement as to whether the applicant has any other criminal charge pending against him or her in any court in the United States or in any other country.

(g) A consent to the use of the nonpublic record created under subsection (13), to the extent authorized by subsection (13).

(5) The applicant shall submit a copy of the application and 2 complete sets of fingerprints to the department of state police. The department of state police shall compare those fingerprints with the records of the department, including the nonpublic record created under subsection (13), and shall forward a complete set of fingerprints to the federal bureau of investigation for a comparison with the records available to that agency. The department of state police shall report to the court in which the application is filed the information contained in the department's records with respect to any pending charges against the applicant, any record of adjudication or conviction of the applicant, and the setting aside of any adjudication or conviction of the applicant and shall report to the court any similar information obtained from the federal bureau of investigation. The court shall not act upon the application until the department of state police reports the information required by this subsection to the court.

(6) The copy of the application submitted to the department of state police pursuant to subsection (5) shall be accompanied by a fee of \$25.00 payable to the state of Michigan. The department of state police shall use the fee to defray the expenses incurred in processing the application.

(7) A copy of the application shall be served upon the attorney general and, if applicable, upon the office of the prosecuting attorney who prosecuted the offense. The attorney general and the prosecuting attorney

shall have an opportunity to contest the application. If the adjudication was for an offense that if committed by an adult would be an assaultive crime or serious misdemeanor, and if the name of the victim is known to the prosecuting attorney, the prosecuting attorney shall give the the victim of that offense written notice of the application and forward a copy of the application to the victim under section 46a of the crime victim's rights act, Act No. 87 of the Public Acts of 1985, being section 780.796a of the Michigan Compiled Laws. The notice shall be sent by first-class mail to the victim's last known address. The victim has the right to appear at any proceeding under this section concerning that adjudication and to make a written or oral statement. As used in this subsection:

(a) "Assaultive crime" means that term as defined in section 9a of chapter X of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being section 770.9a of the Michigan Compiled Laws.

(b) "Serious misdemeanor" means that term as defined in section 61 of Act No. 87 of the Public Acts of 1985, being section 780.811 of the Michigan Compiled Laws.

(c) "Victim" means that term as defined in section 31 of Act No. 87 of the Public Acts of 1985, being section 780.781 of the Michigan Compiled Laws.

(8) Upon the hearing of the application, the court may require the filing of affidavits and the taking of proofs as it considers proper.

(9) Except as provided in subsection (10), if the court determines that the circumstances and behavior of the applicant from the date of the applicant's adjudication to the filing of the application warrant setting aside the adjudication and that setting aside the adjudication is consistent with the public welfare, the court may enter an order setting aside the adjudication. Except as provided in subsection (10), the setting aside of an adjudication under this section is a privilege and conditional, and is not a right.

(10) Notwithstanding subsection (9), the court shall set aside the adjudication of a person who was adjudicated for an offense that if committed by an adult would be a violation or an attempted violation of section 413 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.413 of the Michigan Compiled Laws, if the person files an application with the court and otherwise meets the requirements of this section.

(11) Upon the entry of an order under this section, the applicant is considered not to have been previously adjudicated, except as provided in subsection (13) and as follows:

(a) The applicant is not entitled to the remission of any fine, costs, or other money paid as a consequence of an adjudication that is set aside.

(b) This section does not affect the right of the applicant to rely upon the adjudication to bar subsequent proceedings for the same offense.

(c) This section does not affect the right of a victim of an offense to prosecute or defend a civil action for damages.

(d) This section does not create a right to commence an action for damages for detention under the disposition that the applicant served before the adjudication is set aside pursuant to this section.

(12) Upon the entry of an order under this section, the court shall send a copy of the order to the arresting agency and the department of state police.

(13) The department of state police shall retain a nonpublic record of the order setting aside an adjudication and of the record of the arrest, fingerprints, adjudication, and disposition of the applicant in the case to which the order applies. Except as provided in subsection (14), this nonpublic record shall be made available only to a court of competent jurisdiction, an agency of the judicial branch of state government, a law enforcement agency, a prosecuting attorney, the attorney general, or the governor upon request and only for the following purposes:

(a) Consideration in a licensing function conducted by an agency of the judicial branch of state government.

(b) Consideration by a law enforcement agency if a person whose adjudication has been set aside applies for employment with the law enforcement agency.

(c) To show that a person who has filed an application to set aside an adjudication has previously had an adjudication set aside under this section.

(d) The court's consideration in determining the sentence to be imposed upon conviction for a subsequent offense that is punishable as a felony or by imprisonment for more than 1 year.

(e) Consideration by the governor, if a person whose adjudication has been set aside applies for a pardon for another offense.

(14) A copy of the nonpublic record created under subsection (13) shall be provided to the person whose adjudication is set aside under this section upon payment of a fee determined and charged by the department of state police in the same manner as the fee prescribed in section 4 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.234 of the Michigan Compiled Laws.

(15) The nonpublic record maintained under subsection (13) is exempt from disclosure under Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(16) Except as provided in subsection (13), a person, other than the applicant, who knows or should have known that an adjudication was set aside under this section, who divulges, uses, or publishes information concerning an adjudication set aside under this section is guilty of a misdemeanor.

History: Add. 1988, Act 72, Eff. June 1, 1988;—Am. 1993, Act 344, Eff. May 1, 1994;—Am. 1996, Act 257, Eff. Jan. 1, 1997.

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